

**REMARKS****I. Introduction**

Claims 1-3 are pending in the above application.

Claims 1-30 stand rejected under 35 U.S.C. § 102.

Claims 1, 2 and 21 are independent claims.

**II. Amendments**

Claims 1 and 21 have been amended to more distinctly and particularly point out what applicant regards as the invention therein.

Claim 2 has been rewritten in independent form.

No new matter has been added.

**III. Rejections Under Prior Art**

Claims 1-30 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over Capek et al. (U.S. Pat. 6,094,677).

Anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference as arranged in the claim. See, Akzo N.V. v. U.S. Int'l Trade Commission, 808 F.2d 1471 (Fed. Cir. 1986); Connell v. Sears, Roebuck & Co., 220 USPQ 193, 198 (Fed. Cir. 1983).

Capek does not disclose or suggest inserting an alternative media file into a streaming multimedia file using a first and second cache, a control unit, and a switching mechanism, wherein the alternative media file is inserted in the stream independent of

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boundaries of the multimedia file, as substantially recited by amended claims 1 and 21. Capek discloses to provide an insert during a delay of receiving requested data. Abs.; Figs. 4A and 4B. Capek discloses to maintain an insertion repository 22 which provides inserts to insertion manager 20, at which point insertions are made in a delay period. Fig. 2. Capek discloses to determine if an insert should be provided based on the sufficiency of the delay period, which may be determined by the actual delay seen or an expected delay based on historical information. Col. 10: 52-68; and col. 11: 61 – col. 12: 24. Once the data is retrieved it is provided after the insert, i.e. when the insert is selectively provided with the data, the insert is provided at the beginning of the data – during the delay in retrieving the data. Figs. 3-7; col. 10: 29-51; col. 12: 47-55. Capek does not disclose or suggest inserting an alternative media file into a streaming multimedia file using a first and second cache, a control unit, and a switching mechanism, wherein the alternative media file is inserted in the stream independent of boundaries of the multimedia file.

Accordingly, Capek does not disclose or suggest each and every element of amended claims 1 and 21 and hence does not anticipate amended claims 1 and 21. Likewise, as claims 3-20 and 22-30 depend on amended claims 1 and 21 respectively, and contain all of the limitations thereof, Capek also does not anticipate claims 3-20 and 22-30.

Capek also does not disclose using a control signal output from the cache which indicates that a complete alternative file is stored and is ready for transmission to the predetermined at least one end-user, or will be ready in time to transmit, as recited by claim 2, amended to be in independent form. While the Office action cites to col. 7, lines

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17-25 of Capek, Capek does not disclose the above features. Capek merely discloses to maintain an insertion repository 22 which contains all of the possible insertions from which a particular assertion is selected. Col. 7: 17-47. As repository 22 is not a cache memory, Capek is not concerned with whether the entire insertion is received by it before deciding to transmit the insertion, i.e. as the insertion is stored in the repository 22 the full extent of the insertion is already contained therein. Capek clearly does not disclose or suggest to provide a control signal indicating that a complete alternative file is stored and is ready for transmission, or will be ready in time to transmit, as recited by claim 2.

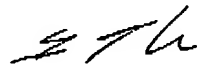
#### IV. Conclusion

Having fully responded to the Office action, the application is believed to be in condition for allowance. Should any issues arise that prevent early allowance of the above application, the examiner is invited contact the undersigned to resolve such issues.

To the extent an extension of time is needed for consideration of this response, Applicant hereby request such extension and, the Commissioner is hereby authorized to charge deposit account number 502117 for any fees associated therewith.

Date: April 4, 2005

Respectfully submitted,

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